

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 247

Driving or Boating Under the Influence

**SPONSOR(S):** Weinstein

**TIED BILLS:**

**IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Public Safety & Domestic Security Policy Committee		Padgett	Cunningham
2)	Criminal & Civil Justice Appropriations Committee			
3)	Criminal & Civil Justice Policy Council			
4)				
5)				

### SUMMARY ANALYSIS

HB 247 provides two additional exemptions to the general rule that in order to arrest a person for a misdemeanor offense, the arresting law enforcement officer must have either witnessed the occurrence of the offense or obtained an arrest warrant prior to making the arrest. The bill would add the offenses of driving under the influence (DUI) and boating under the influence (BUI) to the list of exceptions where an arrest warrant is not required.

The bill does not change the elements of the offenses of DUI or BUI that the state must prove beyond a reasonable doubt for criminal prosecution.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

Section 901.15, F.S., sets forth the instances in which a law enforcement officer can arrest a person without a warrant. For misdemeanor offenses, the general rule is that law enforcement officers must witness the occurrence of the offense in order to make an arrest without a warrant. If the officer does not witness the offense, the officer must obtain an arrest warrant.

In certain instances the Legislature has deemed particular misdemeanor offenses to be of such a nature that they should be exceptions to the above rule. Those crimes which are listed in s. 901.15, F.S., are: violations of injunctions for protection in domestic violence and dating violence situations as well as violations of pretrial release conditions in domestic violence cases; misdemeanor luring or enticing a child and child abuse; aggravated assault upon a law enforcement officer, firefighter and other listed persons; battery; criminal mischief or graffiti-related offenses; and violations of certain naval vessel protection zones or trespass in posted areas in airports. For these offenses, an officer does not have to witness the crime in order to make a warrantless arrest – they only need to have probable cause to believe the person committed the crime.

Warrantless arrest for a violation of chapter 316, F.S.<sup>1</sup>, which includes the offense of DUI, is specifically addressed in s. 901.15, F.S. as follows:

A law enforcement officer may arrest a person without a warrant when:  
(5) A violation of chapter 316 has been committed in the presence of the officer. Such an arrest may be made immediately or in fresh pursuit. Any law enforcement officer, upon receiving information relayed to him or her from a fellow officer stationed on the ground or in the air that a driver of a vehicle has violated chapter 316, may arrest the driver for violation of

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<sup>1</sup> Chapter 316, F.S. contains Florida traffic laws.

those laws when reasonable and proper identification of the vehicle and the violation has been communicated to the arresting officer.

### Proposed Changes

The bill provides that an officer may arrest a person without a warrant if there is probable cause to believe the person has committed the offenses of driving under the influence or boating under the influence.

The bill does not change the elements of the offenses of DUI or BUI that the state must prove beyond a reasonable doubt for criminal prosecution.

#### B. SECTION DIRECTORY:

Section 1: Amends s. 901.15, F.S., relating to when arrest by officer without warrant is lawful.

Section 2: Provides effective date of October 1, 2010.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

None.

##### 2. Expenditures:

None.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

None.

##### 2. Expenditures:

None.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

#### D. FISCAL COMMENTS:

None.

## **III. COMMENTS**

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**